

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

These are the tentative rulings for the **THURSDAY JUNE 27, 2019 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JUNE 26, 2019**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

---

**NOTE: Effective July 1, 2014, all telephonic appearances will be governed by Placer Court Local Rule 20.8. More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

---

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB** and if oral argument is requested, oral argument will be heard at **8:30 a.m.** in **DEPARTMENT 42**, located at 10820 Justice Center Drive, Roseville, California.

---

**1. M-CV-0064948 INVESTMENT RETRIEVERS v. HO, PETER**

The motion to be relieved as counsel is dropped from the calendar at the request of the moving party.

**2. M-CV-0071922 ENERBANK v. KAMAU, WAITHIRA**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

Plaintiff's unopposed motion to compel discovery responses, deem requests for admissions admitted, and request for monetary sanctions is granted. Defendant Waithira Kamau shall provide verified responses and responsive documents, without objections, to form interrogatories, set one and request for production of documents, set one by July 8, 2019.

The matters encompassed in plaintiff's requests for admissions, set one, are deemed admitted. Sanctions in the amount of \$810, which reflects the actual time spent on the motion along with the filing fee, are imposed on defendant Waithira Kamau pursuant to Code of Civil Procedure section 2033.280(c).

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

**3. S-CV-0037732 LOVE, DIANE v. MOSS, KEITH**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

Defendant Jay Bridges' Motion for Order Directing Prior Counsel to Deliver Client File

Defendant Bridges seeks an order instructing his former counsel, Kathleen Finnerty, to return his client file related to Ms. Finnerty's representation of Mr. Bridges in this action. Mr. Bridges contends the court may exercise its inherent authority under Code of Civil Procedure section 128(a)(3) and (5) to compel Ms. Finnerty to produce his client file.

While there is some case law and statutory authority to support the proposition that the court may grant the relief requested, the motion will be denied. First, the California Code of Professional Conduct already requires an attorney upon termination of representation to promptly release to the client, at the request of the client, all client materials and property. (Cal. Rules of Prof. Conduct, Rules 1.16.) Failure to do so could subject an attorney to discipline by the State Bar. Second, even so, attorney Finnerty declares "at no time did [her office] open any file(s) for Mr. Bridges." She further declares that the only files in her possession are those of defendant Worldwide Athletics, Inc. and that the corporation has not instructed her to release any of its files to Mr. Bridges. Accordingly, the court declines to exercise any inherent authority as there has been an insufficient showing that there are any client files of Mr. Bridges to be released. Third, the court notes Mr. Bridges' request comes a year and a half after attorney Finnerty sought to be relieved as his counsel of record. Any disputes regarding any alleged withholding of his client file could have been raised at that time, when Ms. Finnerty's representation was squarely before the court. The motion is denied.

**PLACER COUNTY SUPERIOR COURT**  
**THURSDAY, CIVIL LAW AND MOTION**  
**DEPARTMENT 42**  
**THE HONORABLE CHARLES D. WACHOB**  
**TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

4. S-CV-0039388 NASSIRIAN, NEJLA v. KHOSHABEH, RONALD

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

Defendant Ronald Khoshbeh's Motion for Relief re Code of Civil Procedure section 998 Offer

In the current request, defendant Ronald Khoshbeh seeks relief to reopen the 30 day time period to consider a Code of Civil Procedure section 998 offer made by plaintiff back in January/February of 2018. The relief is brought under Code of Civil Procedure section 473(b) with defendant claiming either excusable neglect or surprise in his failure to consider the offer. After carefully considering the briefing of the parties, the court denies defendant's request. Initially, the extension of Section 473(b) relief here does not appear proper. The section allows the court to relieve a party "from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." The term "proceeding" has been defined as encompassing all measures adopted in the prosecution or defense of an action. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 371-372.) Relief for proceedings falling under Section 473(b) has been extended broadly to include untimely expert witness disclosures; erroneous offers to compromise; inadvertent dismissals; failures to timely respond to request for admissions; and untimely filing of cost bills. (*Ibid.*) This broad extension of relief is inapplicable in cases involving mandatory jurisdictional deadlines. (*Ibid.*) Defendant here seeks the reopening, rather than the acceptance, of a Section 998 offer from a year ago. Allowing for such relief would go against the express statutory language of section 998(b)(2), which states an offer *shall* be deemed withdrawn if not accepted within 30 days after it is made. Reopening the offer would be an improper modification of the express language of the statute. (see *Hofer v. Young* (1995) 38 Cal.App.4th 52, 56.) Such an extension of the broad relief powers under Section 473(b) would be inappropriate.

Even if the court were to extend the powers of Section 473(b) to the current request, defendant has failed to comply with the requirements of the statute. The section mandates the submission of a copy of the proposed pleading along with any request for relief to be filed within six months from when the proceeding was taken. Defendant fails to present any document complying with the proposed pleading requirement. His request is also brought more than a year

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

after the purported Section 998 offer was initially made. For all of these reasons, the motion is denied.

**5. S-CV-0041742 FRAIDENBURGH, RYAN v. FEHRENBACHER, GEORGE**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

Robert Fraidenburgh's motion to withdraw as guardian ad litem (GAL) for plaintiff is denied without prejudice. Mr. Fraidenburgh was appointed the GAL for plaintiff based upon an ex parte application filed on December 3, 2018, where he stated plaintiff was not competent to represent himself due to a mental disability classified by the Social Security Administration. Mr. Fraidenburgh now seeks to terminate his appointment, without appointing a new GAL, contending plaintiff is competent to handle his own affairs. The request, however, suffers from a complete lack of admissible evidence to support his removal as GAL. First, Mr. Fraidenburgh fails to submit any declarations executed under the penalty of perjury. Second, none of the documents submitted are properly authenticated nor is there proper foundation laid for them. Finally, Mr. Fraidenburgh fails to identify what facts now exist that demonstrate plaintiff's ability to understand the nature and consequences of this action. The court declines to entertain Mr. Fraidenburgh's removal as GAL until such time as makes a sufficient showing by admissible evidence establishing that plaintiff is now in a position to understand the nature and consequences of this proceeding. For these reasons, the motion is denied.

**6. S-CV-0041812 MAGEE, TIMOTHY v. PEARSON, GARY**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

**Defendant's Motion to Compel Further Responses to Request for Production of Documents and Sanctions**

The motion is granted in part. Plaintiff shall provide verified responses and responsive documents, without further objections, to requests for production of documents nos. 1, 2, 3, 10, 12, and 13 no later than July 1, 2019.

Defendant's request for sanctions is denied.

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

Defendant's Motion to Compel Further Responses to Special Interrogatories and Sanctions

The motion is granted in part. Plaintiff shall provide verified responses, without further objections, to special interrogatories nos. 1, 2, 3, 4, 5, 6, 9, 10, and 14 no later than July 1, 2019.

Defendant's request for sanctions is denied.

**7. S-CV-0042532 JOYCE, JOSEPH v. BERTHEL, FISHER & CO.**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

Application of Cory D. Olson for Pro Hac Vice Admission

The application of Cory D. Olson to appear pro hac vice is granted as prayed.

Defendant Berthel Fisher & Company Financial Services, Inc.'s Demurrer to the Complaint

The demurrer is sustained with leave to amend. A party may demur a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) "A demurrer based on a statute of limitations is appropriate if the ground appears on the face of the complaint or from matters of which the court may or must take judicial notice." (*Aaronoff v. Martinez-Seftner* (2006) 136 Cal.App.4th 910, 918.) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

A review of the allegations within the complaint show significant pleading defects as it pertains to the moving defendants. Initially, the claims appear to be barred by the statute of limitations since the allegations state Mr. Davis' employment with the moving defendant was terminated in 2012. (Complaint ¶12.) Plaintiffs learned of the poor financial investments in 2015, after Mr. Davis was affiliated with another investment company, when they chose to sell off portions at a loss. (Id. at ¶¶24, 25.) The purported allegations of delayed

**PLACER COUNTY SUPERIOR COURT  
THURSDAY, CIVIL LAW AND MOTION  
DEPARTMENT 42  
THE HONORABLE CHARLES D. WACHOB  
TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

discovery are insufficient to allege a postponement of the applicable statutes of limitation. All four causes of action fail on this basis alone.

Furthermore, the allegations in all four causes of action are deficiently pleaded in regards to the moving defendant. The complaint alleges an employer-employee relationship between defendant and Mr. Davis. (Complaint ¶12.) This employment relationship, however, terminated in 2012. (Ibid.) Plaintiffs do not allege sufficient facts linking defendant's actions to Mr. Davis, who was out of defendant's employment for nearly three years prior to plaintiffs' investment losses.

Finally, none of the causes of action sufficiently plead the essential elements to support the alleged claims. Plaintiffs plead their allegations against defendant in a conclusory fashion without stating the necessary facts to support breach of contract; breach of fiduciary duty; negligence; or negligent misrepresentation. For these reasons, the demurrer is sustained in its entirety.

The remaining issue to address is whether plaintiffs should be afforded leave to amend. A plaintiff has no right to leave to amend after a demurrer is sustained. (*Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 310.) The plaintiff must make an affirmative showing to support a request for leave, demonstrating a reasonable possibility exists that the defects may be cured by an amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) As previously discussed, the claims in the complaint appear to be barred by the applicable statutes of limitations. The only manner in which this deficiency could be remedied is through the inclusion of sufficient factual allegations that address the statutes of limitations. The court has carefully considered the current allegations along with plaintiffs' request for leave. Since this is the first instance where plaintiffs have sought leave and plaintiffs make the representation that they will be able to plead allegations to sufficiently address the statutes of limitations, the court shall exercise its discretion liberally and afford plaintiffs leave to amend their complaint.

Plaintiffs may file and served their first amended complaint by July 12, 2019.

**PLACER COUNTY SUPERIOR COURT**  
**THURSDAY, CIVIL LAW AND MOTION**  
**DEPARTMENT 42**  
**THE HONORABLE CHARLES D. WACHOB**  
**TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

8. S-CV-0042804 MILLER, RODNEY v. MILLER, ROGER

If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.

Defendant's Demurrer to the Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted under Evidence Code section 452.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (Code of Civil Procedure section 430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The demurrer is reviewed keeping these principles in mind.

First Cause of Action – Quiet Title

A quiet title cause of action must allege an adverse claim against which a determination is sought. (Code of Civil Procedure section 761.020(c); *Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 1010.) The allegations within plaintiffs' complaint fail to allege facts of an adverse claim. Plaintiffs' affirmatively allege the quit claim deed executed in favor of plaintiffs included the reservation of a life estate for defendant. (Complaint ¶¶7-9.) Plaintiffs also allege they were expressly told defendant would retain a life estate. (*Id.* at ¶20.) These allegations, when read in conjunction with remainder of the allegations, are insufficient to state an adverse claim requiring a court determination.

Second Causes of Action – Fraudulent Inducement and Fraud

Plaintiffs also allege claims for fraudulent inducement and fraud, both of which are labeled as the second cause of action. Neither of these claims are sufficiently

**PLACER COUNTY SUPERIOR COURT**  
**THURSDAY, CIVIL LAW AND MOTION**  
**DEPARTMENT 42**  
**THE HONORABLE CHARLES D. WACHOB**  
**TENTATIVE RULINGS FOR JUNE 27, 2019 AT 8:30 A.M.**

---

pleaded. Any fraud-related cause of action requires allegations of a misrepresentation either in the form of false representations, concealment, or nondisclosure. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The express factual allegations state defendant executed a document reserving a life estate in the property and plaintiffs were expressly told about the retention of this life estate. (Complaint ¶¶7-9, 20.) Thus, plaintiffs have not sufficiently pleaded a misrepresentation to state any fraud based claim.

Leave to Amend

The demurrer is sustained without leave to amend since plaintiffs' failure to oppose the demurrer is construed as an abandonment of the quiet title, fraudulent inducement, and fraud claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.)

**9. S-CV-0043052 IN RE MINOR, MICHAEL**

**If oral argument is requested, oral argument shall be heard Tuesday, July 2, 2019, 8:30 a.m., in Department 42.**

The petition for approval of transfer of structured settlement payment rights is granted as prayed. In determining whether a proposed transfer should be approved, the court reviews the request to verify that the transfer is fair, reasonable, and in the payee's best interest. (*Insurance Code section 10139.5(b).*) The totality of the payee's circumstances is viewed in light of the factors articulated in Insurance Code section 10139.5(b)(1) through (15). The court has carefully reviewed the petition, supporting declarations, and related attachments in light of the factors found in Insurance Code section 10139.5(b) and finds (1) that the transfer is in the best interest of the payee; (2) the payee has been provided a written advisement to seek independent professional advice regarding the transfer and has knowingly waived the right to receive such advice; (3) the notification, disclosures, and transfer agreement comply with the requirements of Insurance Code sections 10136, 10138, and 10139.5; (4) the transfer does not contravene applicable law or order of the court; (5) the payee understands the terms of the transfer agreement; and (6) the payee does not wish to cancel the transfer agreement. Based upon the foregoing, the court approves the transfer.